

Fair Work Amendment (Protecting Penalty and Overtime Rates) Bill 2025

Submission by the Finance Sector Union of Australia to the Senate Education and
Employment Legislation Committee of the Australian Parliament

Finance Sector Union

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Introduction

The FSU is a registered employee organisation representing approximately 22,000 members across the banking and finance sector throughout Australia. FSU members work in banking, insurance, superannuation, financial planning and finance. Our membership is predominately female, many of whom are engaged in part-time and casual employment.

The FSU is a democratic organisation with representative governance by elected officials and volunteer members and is a member-led organisation in which rank and file members are elected to honorary official positions to governing bodies within the FSU. This includes the National Congress, which is the supreme governing body of the FSU.

The FSU is proud of its long history representing members to achieve better wages and fairer conditions. FSU members are committed to higher integrity in the finance sector and see their role as advocates for a better industry.

The FSU welcomes the opportunity to take part in the Senate Inquiry into the *Fair Work Amendment (Protecting Overtime and Penalty Rates) Bill 2025* (the Bill).

As stated in the ACTU's own submission '2.6 million employees reliant on modern awards rely on penalty rates to help make ends meet, particularly critical as Australia emerges from a cost-of-living crisis that has hit them hard. These workers are more likely to be lower paid, in insecure working arrangements, younger and women' and that 'employer applications to the Fair Work Commission (FWC) would have the effect, if successful, of reducing this additional remuneration via rolled up or exemption rates'.

The FSU adopts and endorses the ACTU's submission to this inquiry.

The Bill

The Bill will insert s 135A in the *Fair Work Act 2009*. Section 135A(1) will require the Fair Work Commission, when exercising its powers under Part 2-3 to make, vary or revoke modern awards, to ensure that:

- a. the rate of a penalty rate or an overtime rate that employees are entitled to receive is not reduced; and
- b. awards do not include terms substituting employees' entitlements to receive penalty or overtime rates, where those terms would have the effect of reducing the additional remuneration referred to in s134(1)(da) that any employee would otherwise receive.

Application to vary the Banking, Finance and Insurance Award 2020

The FSU is strongly opposed to trading-off overtime and penalty rates under the *Banking, Finance and Insurance Award 2020* (BFI Award), which is the relevant award that covers employees in the finance sector and includes the banking, insurance and superannuation industries. As at August 2024 in Australia approximately 526,400 employees were engaged in the finance sector and related industries and are covered by the BFI Award.¹

Two employer groups - Business NSW (BNSW) and Australian Business Industrial (ABI) - have filed an application in the Fair Work Commission to vary the BFI Award to introduce an exemption rate.

Broadly, BNSW and ABI want to introduce an exemption rate into the BFI Award that would allow an employer to pay an employee a single or 'loaded' rate of pay which is 55% above their weekly classification rate for up to 50 hours of work per week.

An employer would be exempted from the following entitlements under the BFI Award for the first 50 hours of work per week:

- minimum rates
- allowances
- overtime
- penalty rates
- annual leave loading

BNSW and ABI imply that an exemption rate would make life easier for employers because it would allow for more flexibility and would 'simplify the regulatory burden' on them; and would 'address several systemic compliance issues that are widespread'²

Annualised wages under the BFI Award

Employers already have the option to pay employees an annualised wage under the BFI Award but by their own admission, BNSW and ABI do not want the burden of tracking or keeping 'detailed' records of employee hours of work³. Without detailed record-keeping of hours worked, employers cannot demonstrate that they are meeting their obligations to properly pay their workers, not only under the BFI Award but also the *Fair Work Act*. Nor can employers show that they are ensuring safe and healthy workplaces if they do not even know how many hours their employees are working.

Employers should agree to bargain

Rather than attempting to undermine the award safety net that employees rely upon, employers wanting flexibility should agree to bargain for an enterprise agreement. Statutory safeguards such as the 'better off overall test' under the *Fair Work Act* ensure employees are protected where employers seek to trade-off award entitlements.

Potential for loss of pay

The FSU has carried out modelling and working calculations using various roster patterns to determine the effect the proposed exemption rate would have on pay under the BFI Award and it quickly becomes evident that there is a real potential for an employee to be underpaid.

The Bill is needed and necessary

Workers in the finance sector work unsociable hours. They work shift work, at night, weekends and sometimes have irregular or unpredictable hours. For many, the additional pay received under the BFI Award for working such hours is a significant component of their pay.

Penalty and overtime rates in the BFI Award directly underpin their entitlements for working such hours.

The FSU supports the Bill in principle in so far as it protects and preserves penalty and overtime rates in awards.

The FSU however is strongly opposed to an exemption rate in the BFI Award that would have the potential to undermine the integrity of the award safety net and reduce workers' take-home pay.

The Bill should go further and prohibit any introduction of new exemption rates into awards and in particular the BFI Award, which as mentioned above, is currently subject to an application to vary by two employer groups.